the company to make the charge on future net profits a charge on capital and a present debt, and to issue shares fully paid in satisfaction of the debt so created. The Court of Appeal held, and I think rightly, that the charge was a charge exclusively on income, and that condition 13 merely provided that the company might, if it had funds in hand available for the purpose, pay off the charge in a lump instead of discharging it by instalments. If the construction which Parker, J., placed on condition 13 was the true construction, I should still doubt whether the scheme could be carried out safely. Is it possible for directors to create a debt against their company and to saddle their company with it for the purpose of enabling them to issue shares without payment in cash, however advantageous they may consider the transaction to be? But as the question does not arise, I abstain from expressing any final opinion upon it. It seems to me that the proposed transaction is *ultra vires*, and that the directors, if they were to carry it out, would be guilty of a breach of trust which would involve personal liability on their part. They would be issuing shares without payment either in money or in money's worth. The charge is a charge on net profits only; that is, it is a charge on money which the company earns, but by the declaration of a general meeting on the recommendation of the directors it is, or would be but for the charge upon it, the property of the shareholders as individuals and not the property of the company. The company as a corporation would be receiving nothing whatever in return for the extinction of the charge. Nor would the position of the company's creditors be improved in any respect. If the directors were to make a return, as they are bound to do under the Act of 1908, they would have to state explicitly that the consideration for the issue of the shares was the release or relinquishment of a charge upon money which did not belong to the company as a corporation, but to the shareholders as individuals and the incumbrancers to whom it was hypothecated. I am therefore of opinion that the judgment under appeal is right and must be affirmed.

Appeal dismissed.

Counsel for Appellants—Romer, K.C.—Ward Coldridge. Agents—Allen, Edwards, & Oldfield, Solicitors.

Counsel for Respondent—Martelli, K.C.—Whitmore Richards. Agents—Cox & Lafone, Solicitors.

HOUSE OF LORDS.

Thursday, June 16, 1910.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, James of Hereford, and Collins.)

VICKERS, SON, & MAXIM *v.* EVANS.

(On Appeal from the Court of Appeal in England.)

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *Sched. I, sec.* 16—*Review—Minor Workman—Weekly Earnings—Probable Earnings in Other Employment.*

The Workmen's Compensation Act 1906, by Sched. I, sec. 16, provides that in a review of a weekly payment "where the workman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent. of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding one pound."

Held that the amount of the probable earnings must be estimated by the arbiter in the exercise of his discretion, and need not be restricted to earnings which the workman would have obtained had he continued under the same employer.

A workman, aged twenty, was injured while in the service of the appellants as a labourer. He was qualified as a skilled artisan in another trade to which he meant to return when trade improved. In an application for review of the weekly payment more than a year after the injury, the County Court Judge found that his probable earnings had he remained uninjured would have been 30s. He would not have earned so much in the appellants' employment. The weekly payment fixed by the County Court Judge upon this basis was affirmed by the Court of Appeal (Cozens-Hardy, M.R., and Fletcher-Moulton, L.J., Buckley, L.J., dissenting).

The employers appealed.

Their Lordships gave considered judgment as follows:—

Lord Chancellor (Loreburn)—This appeal may serve to remind us of a truth which is sometimes forgotten, that this House sitting judicially does not sit for the purpose of hearing appeals against Acts of Parliament, or of providing by judicial construction what ought to be in an Act, but simply of construing what the Act says. We are considering here, not what the Act ought to have said, but what it does say, and I agree with the conclusion which has been arrived at by the Court of Appeal. The standard by which the weekly payments are to be measured in the Act

is, generally speaking, the average weekly earnings during the period of the workman's actual employment under the same employer, but in the case of a minor, clause 16 of the first schedule makes special provision for a review of the weekly payment. It says that the arbitrator may increase it "to any amount not exceeding 50 per cent. of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured." Now does that mean, as the appellants contend, what he would probably have been earning in his actual employment under the same master, or may you consider other possible employment? The appellants' contention involves reading words into this clause. The clause does not contain them, and we are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. The reasons urged by the appellants are, in the first place, that generally speaking the standard is the earnings in the workman's actual employ under the same employer. That is so; but no such express terms are to be found in this particular clause, and it seems to me that that argument tends rather against than in favour of the appellants. The second reason put is that in the case of an adult, in reviewing the weekly payments, you could not have looked beyond the employment under the same employer except in the specified cases of difficulty provided for in the schedule in clause 2 (*a*); and it is said that there is no reason why a change should be made in this respect because of the workman being under age. I think, if we were to consider the merits of the policy, that there is great force in what is said upon this subject by Fletcher Moulton, L.J., but it is unnecessary to enter upon that consideration. The arguments urged seem to me quite insufficient to lead us to read these words into the Act of Parliament. The question is—What would the workman probably have been earning? Those are the only provisions in the Act, and I think that the conclusion arrived at by the Court of Appeal is perfectly sound.

LORD MACNAGHTEN—I agree. I do not see any reason for departing from or qualifying the plain words of the section, and I think that the evidence on which the learned County Court Judge seems to have relied was properly admitted. There are no doubt many employments, such, for instance, as employment in a colliery, in which, as has been pointed out, boys follow the calling of their fathers, looking forward to a regular increase of earnings as they become more and more capable of doing a man's work. In such a case as that there is no difficulty in estimating the probable amount of earnings which the workman if uninjured would have been able to gain. On the other hand, there are employments in which boys are engaged simply because they are boys and not men, in which there is no prospect of advancement or employment when they grow up to man's estate. When they cease to be boys they are discharged to find their livelihood as best they can. In such a case the method which the statute has adopted seems to be the only method practicable. Within a fixed limit the statute leaves the question quite at large, trusting to the discretion and good sense of the County Court Judge. No doubt the task committed to him is somewhat difficult; but the Judge has been trusted, and I think properly trusted, to deal with each case reasonably without any fear of his making an extravagant or immoderate estimate of the workman's earning capacity.

LORD JAMES OF HEREFORD concurred.

LORD COLLINS—I am of the same opinion. There is no doubt that in the earlier Act the standard by which the compensation was to be appraised was the standard of the workman's earnings in the employment of the same employer in whose employment he was at the date of the accident; but as was pointed out by Cozens-Hardy, M.R., in the case of a minor under the present Act, there has been a radical difference made and the standard has been altered in several respects. For instance, 100 per cent. is substituted for 50 per cent. of his average weekly earnings, and we find also that the analogy of other employments under other masters is introduced, failing the possibility of his continuing to carry on his employment in the employment of the same master. So that you have a radical alteration in the standard introduced in the case of a minor. The problem to be solved, or the salient point at all events to be solved, by the learned County Court Judge in the case of a minor, according to the 16th clause of the first schedule, is that on such review "the amount of the weekly payment may be increased to any amount not exceeding 50 per cent. of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured." So that the primary question which the County Court Judge has to decide is what they would have amounted to under conditions which have not arisen. In fact it is a matter of speculation as to what the workman would have been earning if he had remained uninjured. Now that *prima facie* would leave the learned County Court Judge at large to consider (having regard to the constitution and the antecedents of the workman) what in all probability he would have been earning if uninjured. That clearly would not *prima facie* have cut down the consideration to what he would have been earning in the same employment. But then, furthermore, the particular clause here—clause 16—does not in terms refer to the standard of his actual employment at all. The words are not there, and the proposition, which is obviously the primary proposition to be dealt with by the learned County Court Judge who is considering it, is what would have

been his earning capacity—not what would have been his earning capacity in the particular employment in which he then was, but generally his earning capacity. That is the *prima facie* meaning of the words used, and they are not limited by any express provision that the standard is to be what he would have been earning in the employment of the same employer. That is enough, I think, to carry the case as the Court of Appeal have decided it; but even if the standard to be aimed at by the learned County Court Judge was a guess at what the workman would have been able to earn in the same employment, even supposing that was the condition, I am not at all sure that it has been violated in this case, because where there is an absence of evidence as to the actual earnings in exactly the same employment in the same district, the Act itself introduces the element of another workman other than the man himself, and what another workman is able to earn in employment which is not that of the same employer but an analogous employment in the same district. That has obviously introduced a standard which is not necessarily the standard of the employment of the same employer. Under those circumstances what has the learned County Court Judge to do in order to give himself a guide as to what this youth might probably have earned hereafter? Surely he is not bound to limit himself to speculations as to what he would have earned in the same employment under the same master. He must guide himself, in the first instance, as to the probabilities of the boy ever emerging from the condition of a mere labourer into that of a skilled artisan. In this case evidence is tendered and received that he was in fact able to overstep that barrier—that he had become in fact more than a mere labourer; he had become a skilled workman in another and, the County Court Judge might well consider, very analogous employment, employment in engineering works involving mechanical work of the same class, though probably not technically in every detail the same as that on which he was employed; but he had acquired the position of a skilled workman in mechanical occupation in the same district. He had been engaged in stove fitting, which was in the same class of occupation as that in which he had been employed at Vickers & Maxim's works. Therefore it seems to me that the learned County Court Judge might (and it was for him) perfectly well treat employment in which he had risen to the position of a skilled artisan as the same for practical purposes as testing his capacity to earn money in that sort of work. He might perfectly well treat that as a guiding fact in arriving at the decision as to whether this youth would have been able to earn the wages of a man and not those of a boy. But that is the head and front of the learned County Court Judge's offending in this matter. He has arrived at the conclusion that this boy should be looked upon as a person who, at the time at which he had to consider his capacity, had emerged from the position of a labourer into that of a skilled artisan, and was entitled therefore to have substituted the wages assessed by that standard. It seems to me, for these reasons, that the decision of the learned County Court Judge was perfectly right, and that the Court of Appeal was right in affirming it.

Appeal dismissed.

Counsel for Appellants—C. A. Russell, K.C. — H. T. Waddy. Agents — Telfer, Leviansky, & Company, Solicitors.

Counsel for Respondents—E. M. Pollock, K.C.—G. A. Scott. Agents—H. G. Campion & Company, Solicitors.

HOUSE OF LORDS.

Thursday, June 23, 1910.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, James of Hereford, and Dunedin.)

GALBRAITH *v.* GRIMSHAW.

(On Appeal from the Court of Appeal in England.)

Bankruptcy — Conflict of Law — Foreign Bankruptcy—Security Prior in Date.

A foreign bankruptcy is recognised only from its date, and does not cut down security rights obtained before that date, although they would be cut down by the law of the foreign bankruptcy.

Goetze v. *Aders* (1874, 12 S.L.R. 121, 2 R. 150) *approved.*

The appellant was a trustee in a Scottish sequestration. The respondents, who were judgment creditors of the bankrupt, had attached by a garnishee order an English debt due to the bankrupt. This security, being obtained less than sixty days before the date of the Scottish sequestration, would have been thereby cut down had it taken the form of letters of arrestment of a Scottish debt.

The Scottish trustee contested the effect of the garnishee order, and judgment against him was pronounced by the Court of Appeal (Farwell, Buckley, and Kennedy, L.JJ.).

The trustee appealed.

At the conclusion of the arguments their Lordships gave judgment as follows:—

Lord Chancellor (Loreburn)—In this case I think that the conclusion arrived at by the Court of Appeal ought to be supported. To my mind your Lordships would be wise to apply the rule explained by Lord President Inglis in the case of *Goetze* v. *Aders* (1874, 12 S.L.R. 121, 2 R. 150). I think that the rule is applicable in England also. An attachment in England will not prevail against a claim of a foreign trustee in a bankruptcy which is prior in date, provided that the effect of the bankruptcy is to vest in the trustee the assets in question. If the attachment is prior in date, then I do